

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAMBU BAYOH,	:	
	:	
Plaintiff,	:	18cv5820
	:	(DLC)
-v-	:	
	:	<u>ORDER</u>
AFROPUNK LLC, MATTHEW MORGAN and	:	
JOCELYN COOPER, individually,	:	
	:	
Defendants.	:	
	:	
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DENISE COTE, District Judge:

The plaintiff brought this action seeking damages and injunctive relief. For the following reasons, the defendants' motion for summary judgment on the damages claims is granted and the jury trial, scheduled to begin on November 2, 2020, is cancelled. The plaintiff's claim for injunctive relief will be addressed at a conference to be held on October 30.

Plaintiff Mambu Bayoh is a photographer and sued Afropunk LLC ("Afropunk") and two of its employees (collectively, "Defendants") for copyright infringement. Bayoh asserts that the Defendants' use of 28 of his copyrighted photographs in connection with the promotion of Afropunk music festivals exceeded the limited license he had given Afropunk.

Because Bayoh did not timely register his photographs, he may not obtain an award of statutory damages. On October 26,

2020, this Court granted the Defendants' motion to exclude Bayoh's two damages experts from testifying at trial. Bayoh v. Afropunk LLC, No. 18CV5820 (DLC), 2020 WL 6269300, at *1 (S.D.N.Y. Oct. 26, 2020). Through these experts, Bayoh sought to prove at trial that he is entitled to an award of actual damages and the disgorgement of Afropunk's profits. An Order of October 26 required the parties to address, in light of the ruling on the motion to exclude testimony from the two experts for the plaintiff, whether this action should be dismissed in its entirety. In response, Bayoh concedes that without these experts he is unable to establish an entitlement to any damages award.

While an award of damages is not an element of a copyright claim, On Davis v. The Gap, Inc., 246 F.3d 152, 158 (2d Cir. 2001), Bayoh contends that he has one surviving claim -- a claim for injunctive relief. A claim for injunctive relief sounds in equity. Great-W. Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 211 n.1 (2002). As a result, Bayoh no longer has a right to a jury trial and the November 2 jury trial is cancelled.¹ See

¹ Because the COVID-19 pandemic is ongoing, this court has reconfigured several courtrooms and taken other measures to ensure the health and safety of all visitors to the courthouse, including members of the venire and jurors. While arrangements have been made to allow this case to proceed to trial before a jury on November 2, it is appropriate to provide the Clerk of

Pereira v. Farace, 413 F.3d 330, 337 (2d Cir. 2005) ("By preserving the right to a jury trial only in 'suits at common law,' the Seventh Amendment of the United States Constitution perpetuates the law/equity dichotomy.").

A conference will be held to address Bayoh's assertion that he has an outstanding claim for injunctive relief. While a preliminary injunction was entered in this case on July 11, 2018, Bayoh's pretrial order, submitted on October 16, 2020, gave no notice of any intent to seek a permanent injunction.

In opposing dismissal of this case, Bayoh suggests that the Defendants should be held in contempt of violation of the preliminary injunction. No contempt proceeding may be initiated without the filing a notice of motion or order to show cause. L. Civ. R. 83.6. Accordingly, it is hereby

ORDERED that the Defendants' motion for summary judgment on plaintiff's damages claims is granted.

IT IS FURTHER ORDERED that the November 2, 2020 jury trial is cancelled.


Court with as much notice as possible regarding the scheduling of trials and their cancellation.

IT IS FURTHER ORDERED that a telephone conference will be held on **Friday, October 30, 2020** at **4:00 p.m.** The dial-in credentials for the telephone conference are the following:

Dial-in: 888-363-4749
Access code: 4324948

IT IS FURTHER ORDERED that the parties shall use a landline if one is available.

Dated: New York, New York
October 28, 2020



DENISE COTE
United States District Judge